

MINIMUM WAGE LAW

RECORD KEEPING PROVISIONS

and

OVERTIME FOR TRUCK AND BUS DRIVERS

WAC 296-128-010 Records required. For all employees who are subject to RCW 49.46.020, employers shall be required to keep and preserve payroll or other records containing the following information and data with respect to each and every employee to whom said section of said act applies:

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes;

(2) Home address;

(3) Occupation in which employed;

(4) Date of birth if under 18;

(5) Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees;

(6) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" shall be any consecutive 24 hours);

(7) Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;

(8) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;

(9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;

(10) Total wages paid each pay period;

(11) Date of payment and the pay period covered by payment;

(12) Employer may use symbols where names or figures are called for so long as such symbols are uniform and defined.

[Regulation 294.7.001 (part), filed 12/30/60.]

(Minimum Wage Law - Truck Drivers
F700-095-000 (1/99)

WAC 296-128-011 Special recordkeeping requirements. (1) In addition to the records required by WAC 296-128-010, employers who employ individuals as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act shall maintain records indicating the base rate of pay, the overtime rate of pay, the hours worked by each employee for each type of work, and the formulas and projected work hours used to substantiate any deviation from payment on an hourly basis pursuant to WAC 296-128-012. The records shall indicate the period of time for which the base rate of pay and the overtime rate of pay are in effect.

For the purposes of this section and WAC 296-128-012, "base rate of pay" means the amount of compensation paid per hour or per unit of work in a workweek of forty hours or less. A base rate of pay shall be established in advance of the work performed and may be based on hours or work units such as mileage, performance of specified duties, or a specified percentage of the gross proceeds charged for specified work. A base rate of pay shall not be established that will result in compensation at less than the minimum wage prescribed in RCW 49.46.020. "Overtime rate of pay" means the amount of compensation paid for hours worked within the state of Washington in excess of forty hours per week and shall be at least one and one-half times the base rate of pay.

(2) The records required by this section shall be made available by the employer at the request of the department. Any current or past employee may obtain copies of the formula, the base rate of pay, the overtime rate of pay, and that employee's records. Job applicants seeking employment by the employer as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act, may obtain copies of the formula, the base rate of pay, and the overtime rate of pay.

[Statutory Authority: RCW 43.22.270, 49.46.130 and 1989 c 104. 89-22-120, § 296-128-011, filed 11/1/89, effective 12/2/89.]

WAC 296-128-012 Overtime for truck and bus drivers. (1)(a) The compensation system under which a truck or bus driver subject to the provisions of the Federal Motor Carrier Act is paid shall include overtime pay at least reasonably equivalent to that required by RCW 49.46.130 for working within the state of Washington in excess of forty hours a week. To meet this requirement, an employer may, with notice to a truck or bus driver subject to the provisions of the Federal Motor Carrier Act, establish a rate of pay that is not on an hourly basis and that includes in the rate of pay compensation for overtime. An employer shall substantiate any deviation from payment on an hourly basis to the satisfaction of the department by using the following formula or an alternative formula that, at a minimum, compensates hours worked within the state of Washington in excess of forty

hours per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours projected to be worked. The following formula is recommended for establishing a uniform rate of pay to compensate work that is not paid on an hourly basis and for which compensation for overtime is included:

1. Define work unit first. E.g., miles, loading, unloading, other.
2.
$$\frac{\text{Average number of work units}}{\text{per hour}} = \frac{\text{Average number of work units accomplished per week}}{\text{Average number of hours projected to be worked per week}}$$
3.
$$\text{Weekly Base Rate} = \text{Number of units per hour} \times 40 \text{ hours} \times \text{base rate of pay}$$
4.
$$\text{Weekly Overtime rate} = \text{Number of units per hour} \times \text{number of hours over 40} \times \text{overtime rate of pay}$$
5.
$$\text{Total weekly pay} = \text{Weekly base rate plus weekly overtime rate}$$
6.
$$\text{Uniform rate of pay} = \frac{\text{Total weekly pay}}{\text{Total work units}}$$

Example:

A truck driver is paid on a mileage basis for a two hundred thirty mile trip performed about ten times a week. The base rate of pay is twenty cents a mile. The overtime rate of pay is thirty cents a mile. The average length of the trip is four and one-half hours.

1.
$$\frac{2300 \text{ mi.}}{\text{per week}} \div \frac{45 \text{ hours}}{\text{per week}} = \frac{51.1 \text{ miles}}{\text{per hour}}$$
2. (a) $51.1 \text{ miles/hour} \times 40 \text{ hours} \times .20/\text{mile} = \408.80
 (b) $51.1 \text{ miles/hour} \times 5 \text{ hours} = 255.5 \text{ miles}$
 (c) $255.5 \text{ miles} \times .30/\text{mile} = \76.65
 (d) $\$408.80 \text{ plus } \$76.65 = \$485.45 \text{ divided by } 2300 \text{ miles} = 21.1 \text{ cents mile}$

(b) In using a formula to determine a rate of pay, the average number of hours projected to be worked and the average number of work units accomplished per week shall reflect the actual number of hours worked and work units projected to be accomplished by persons performing the same type of work over a representative time period within the past two years consisting of at least twenty-six consecutive weeks.

(c) The department may evaluate alternative rates of pay and formulas used by employers in order to determine whether the rates of pay established under this section result in the driver receiving compensation reasonably equivalent to one and one-half times the base rate of pay for actual hours worked within the state of Washington in excess of forty hours per week.

(2) Where an employee receives a different base rate of pay depending on the type of work performed, the rate that is paid or used for hours worked within the state of Washington in excess of forty hours per week shall be at least the overtime

rate of pay for the type of work in which most hours were worked.

[Statutory Authority: RCW 43.22.270, 49.46.130 and 1989 c 104. 89-22-120, § 296-128-012, filed 11/1/89, effective 12/2/89.]